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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BERHAN ABRAHAM,

Plaintiff,

vs.

MERCHANTS CREDIT
CORPORATION, a Washington
Corporation, and JOHN DOE
COLLECTOR an unidentified debt
collector for Merchants Credit
Corporation,

Defendants.

Case No.:

COMPLAINT

Plaintiff Berhan Abraham, by and through her attorney, Michael D. Kinkley
of Michael D. Kinkley, P.S., and Scott Peterson of Law Office of Scott Peterson
allege the following:

I. COMPLAINT

1.1 This is an action for damages and remedies against defendants, Merchants Credit Corporation, a Washington Corporation (“MercCred”); and John Doe Collector, an unidentified debt collector for MercCred (“John Doe Collector”) (collectively “defendants”), pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., (“FDCPA”); and for damages and remedies against defendants pursuant to the State of Washington Collection Agency Act, RCW 19.16, (“WCAA”) and pursuant to the Washington State Consumer Protection Act (RCW 19.86 et seq.) (“WCPA”).

II. JURISDICTION & VENUE

2.1. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d), 28 U.S.C. §1337, and 28 U.S.C. §1331. Supplemental jurisdiction exists for state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available pursuant to 28 U.S.C. §2201 and §2202.

2.2. Venue is proper in this District under 28 U.S.C. §1391(b) because the Defendants conduct affairs and transact business in this District, and a significant portion of the unlawful acts giving rise to this Complaint occurred in this District, and the plaintiffs reside within the territorial jurisdiction of the court.

III. FEDERAL QUESTION
SUBJECT MATTER JURISDICTION

- 3.1. Plaintiff Berhan Abraham is a “consumer” as defined by the FDCPA, 15 U.S.C. §1692a(3). She is an individual.
- 3.2. Defendant MercCred, was attempting to collect a “debt” as defined by FDCPA, 15 U.S.C. §1692a(5).
- 3.3. Defendant John Doe Collector, was attempting to collect a “debt” as defined by FDCPA, 15 U.S.C. §1692a(5).
- 3.4. The alleged debt was an alleged obligation of plaintiff to pay money arising out of a transaction primarily for personal, family, or household purposes.
- 3.5. Defendant MercCred is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).
- 3.6. Defendant John Doe Collector is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).
- 3.7. Defendant MercCred uses interstate commerce or the mails for the collection of debts.
- 3.8. Defendant John Doe Collector uses interstate commerce or the mails for the collection of debts.
- 3.9. The principle purpose of MercCred’s business is the collection of debts.

1 3.10. Defendant MercCred regularly collects or attempts to collect, directly or
2 indirectly, debts owed or due or asserted to be owed or due another using
3 the telephone and mail.
4

5 3.11. Defendant John Doe Collector regularly collects or attempts to collect,
6 directly or indirectly, debts owed or due or asserted to be owed or due
7 another using the telephone and mail.
8

9 3.12. Defendant MercCred is a “collection agency” as defined by RCW
10 19.16.100(2).
11

12 3.13. Defendant MercCred communicated with the Plaintiffs with the intent to
13 collect a debt.

14 3.14. Defendant John Doe Collector communicated with the Plaintiffs with the
15 intent to collect a debt.
16

17 IV. PARTIES

18 4.1. Now, and at all relevant times, Plaintiff Berhan Abraham was a resident
19 of the State of Washington residing within the territorial jurisdiction area
20 of the United States District Court for the Western District of
21 Washington.
22

23 4.2. Defendant MercCred is a Washington Corporation, engaged in the
24 business of collecting debts within the State of Washington; which debts
25 were originally owed to another.

1 4.3. The principle purpose of MerCredit's business activities within the
2 jurisdiction of this court is the collection of debts originally owed another
3 using the mail and telephone, and defendant regularly attempts to collect
4 debts alleged to be due another or originally owed to another.
5

6 4.4. Defendant MercCred is doing business as a "debt collector" in the
7 Western District of Washington of the United States District Court as
8 defined by the FDCPA, 15 U.S.C. §1692a(6).
9

10 4.5. Defendant John Doe Collector is an employee of MercCred.

11 4.6. All acts done on behalf of Defendant John Doe Collector were done on
12 his behalf and on behalf of MercCred.
13

14 V. FACTS

15 5.1. On July 26, 2007, Plaintiff Berhan Abraham received a letter addressed
16 to her from MercCred, ("collection letter").
17

18 5.2. The collection letter contained the following text in the body of the letter,
19
20
21
22
23
24
25

*** PLEASE DETACH AND RETURN IN THE ENCLOSED ENVELOPE WITH YOUR PAYMENT *** MCAIPN03TY6BFE4119

You are hereby notified that a balance is outstanding with our office.

Our records indicate that you have failed to pay your obligation. It is our policy to report some collection accounts to credit bureaus. Information may be kept on a credit report for 7 years. Adverse credit ratings become public record information, it may result in future denial of credit.

Your account number is: P0441854. Please use this number when referencing your account.

This communication is from a debt collector.

Mr. Riley ext 137

	princ	charges	payments	balance
	1231.00	0.00	0.00	1231.00
c/int	0.00	0.00	0.00	0.00
c/oth	0.00	0.00	0.00	0.00
m/rtn	0.00	0.00	0.00	0.00
a/int	6.46	0.00	0.00	6.46
c/cst	0.00	0.00	0.00	0.00
h/cst	0.00	0.00	0.00	0.00
L/cst	0.00	0.00	0.00	0.00
TOTAL	1237.46	0.00	0.00	1237.46

acct#	princ	c/int	c/oth	a/int	cst	payments	balance
1151763	1231.00	0.00	0.00	6.46	0.00	0.00	1237.46

- 5.3. A true and correct copy of the July 26, 2007, collection letter from MercCred is attached as Exhibit 1.
- 5.4. The July 26, 2007, the collection letter demanded payment of \$1,237.46 ("alleged debt").
- 5.5. The alleged debt demanded in the collection letter was for medical treatment at Harborview Medical Center for someone other than Plaintiff Berhan Abraham.
- 5.6. Plaintiff Berhan Abraham was not the person who received the treatment at Harborview Medical Center resulting in the alleged debt.
- 5.7. Plaintiff Berhan Abraham had not received any medical treatment at Harborview Medical Center since before 2005.

1 5.8. The person who received the medical treatment resulting in the alleged
2 debt was a man by the name of Abraham Berhanu.

3
4 5.9. Prior to sending the collection letter, MercCred and John Doe Collector
5 were aware that Plaintiff Berhan Abraham was not the person who
6 received the medical treatment at Harborview Medical Center which
7 resulted in the alleged debt.
8

9 5.10. Prior to the July 26, 2007, collection letter, MercCred had obtained a
10 default judgment against Plaintiff Berhan Abraham for an alleged
11 obligation related to medical treatment provided to Abraham Berhanu.
12

13 5.11. Plaintiff Berhan Abraham demonstrated to MercCred that she did not
14 know Mr. Berhanu and was not responsible for Mr. Berhanu's medical
15 expenses.
16

17 5.12. MercCred was dunning Ms. Abraham for Mr. Berhanu's debts due solely
18 to the somewhat similarity of the names, a fact which MercCred was
19 aware.
20

21 5.13. MercCred had previously attempted to collect a different debt from
22 Plaintiff Berhan Abraham that they later determined was owed by
23 another person.
24
25

VI. VIOLATION OF THE FAIR DEBT
COLLECTION PRACTICES ACT

6.1 Defendant MercCred violated the FDCPA causing actual Damages to the Plaintiffs.

6.2 Defendant John Doe Collector violated the FDCPA causing actual Damages to the Plaintiffs.

6.3 Defendant MercCred violated 15 U.S.C. § 1692g(a) by failing to provide a writing containing the notice required by, 15 U.S.C. 1692g(a) (FDCPA “g” Notice). No writing has ever been provided to Plaintiffs regarding the alleged debt i.e. no written communication of the FDCPA “g” Notice was made within five days of the initial communication in an attempt to collect the past due rent alleged debt from the Plaintiff.

6.4 Defendant MercCred violated 15 U.S.C. § 1692e by making false, deceptive and misleading statements which indicated that the Plaintiff was responsible for the alleged debt.

6.5 Defendant John Doe Collector violated 15 U.S.C. § 1692e by making false, deceptive and misleading statements which indicated that the Plaintiff was responsible for alleged debt.

1 6.6 Defendant MercCred violated 15 U.S.C. § 1692f by using unfair and
2 unconscionable means to collect the alleged debt.

3 6.7 Defendant John Doe Collector violated 15 U.S.C. § 1692f by using
4 unfair and unconscionable means to collect the alleged debt.

5 6.8 Defendant MercCred violated 15 U.S.C. § 1692f(1) by attempting to
6 collect an amount (including any interest, fee, charge, or expense
7 incidental to the principal obligation) not expressly authorized by the
8 agreement creating the debt or permitted by law.

9 6.9 Defendant John Doe Collector violated 15 U.S.C. § 1692f(1) by
10 attempting to collect an amount (including any interest, fee, charge, or
11 expense incidental to the principal obligation) not expressly
12 authorized by the agreement creating the debt or permitted by law.

13 6.10 Defendant John Doe Collector had a telephone conference with
14 Plaintiff Abraham after July 26, 2007, in which Ms. Abraham
15 informed John Doe Collector that that was not her debt.

16 6.11 Defendant John Doe Collector insisted she would have to pay
17 anyway.

18 6.12 Defendant John Doe Collector and Defendant MercCred threatened
19 further collection action.
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XII. VIOLATION OF THE WASHINGTON
COLLECTION AGENCY ACT

7.1 Defendant MercCred violated the Washington Collection Agency Act (WCAA), RCW19.16 et seq.

7.2 Defendant John Doe Collector violated the WCAA, RCW19.16 et seq.

7.3 Defendant MercCred is a “collection agency” as defined by RCW 19.16.100(2).

7.4 Defendant John Doe Collector is an employee of a “collection agency” as defined by RCW 19.16.100(2).

7.5 Defendant MercCred is collecting debts in violation of the prohibited practices section of the WCAA, RCW 19.16.250.

7.6 Defendant John Doe Collector is collecting debts in violation of the prohibited practices section of the WCAA, RCW 19.16.250.

7.7 As a proximate cause of the unlawful debt collection Plaintiff Abraham suffered actual damages and is also entitled to statutory damages.

XIII. VIOLATION OF THE
CONSUMER PROTECTION ACT

8.1 Defendant MercCred violated the Washington Consumer Protection Act (WCPA).

1 8.2 Defendant John Doe Collector violated the Washington Consumer
2 Protection Act (WCPA).

3
4 8.3 Violation of the WCAA is a per se violation of the Washington State
5 Consumer Protection Act. RCW 19.16.440.

6 8.4 Any violation of the WCAA prohibited practices section, RCW
7 19.16.250 is an unfair act or practice and/or an unfair method of
8 competition in the conduct of trade or commerce. RCW 19.16.440.

9
10 8.5 Any violation of the Washington State Collection Agency Act
11 (WCAA) prohibited practices section; RCW 19.16.250 affects the
12 public interest in violation of the Washington State Consumer
13 Protection Act. RCW 19.16.440.

14
15 8.6 Defendants have violated the WCCA including but not limited to the
16 prohibited practices section (RCW 19.16.250).

17
18 8.7 Defendants have violated the Washington Administrative Code
19 governing the actions of collection agencies.

20 8.8 The business of collection agencies, as well as all acts and practices of
21 collection agencies, debt collectors, are subject to the Consumer
22 Protection Act, RCW 19.86 and subsequent sections.
23
24
25

1 8.9 The Consumer Protection Act of the State of Washington requires that
2 all collection agents, debt collectors, abstain from unfair or deceptive
3 practices or acts and unfair methods of competition.
4

5 8.10 Defendant MercCred by and through its agents and employees,
6 policies and procedures, have engaged in deceptive acts and practices,
7 unfair acts and practices, and unfair methods of competition that have
8 caused injury to the Plaintiff.
9

10 8.11 Defendant John Doe Collector has engaged in deceptive acts and
11 practices, unfair acts and practices, and unfair methods of competition
12 that have caused injury to the Plaintiff.
13

14 8.12 Defendant MercCred has engaged in unfair and deceptive acts and
15 practices in attempting to collect an alleged debt from the plaintiff.
16

17 8.13 Defendant John Doe Collector has engaged in unfair and deceptive acts
18 and practices in attempting to collect an alleged debt from the plaintiff.
19

20 8.14 Defendant MercCred has is in the business of debt collection in trade or
21 commerce.
22

23 8.15 Defendant John Doe Collector has is in the business of debt collection in
24 trade or commerce.
25

8.16 Unlawful and Unfair Debt Collections is against public interest.

1 8.17 The Defendant MercCreds actions were the direct cause of injury to
2 Plaintiffs' property.

3
4 8.18 The Defendant John Doe Collectors actions were the direct cause of
5 injury to Plaintiffs' property.

6 8.19 The violations have harmed and unless enjoined will continue to harm
7 the public interest by causing Plaintiffs and other similarly situated to
8 pay collection charges that are unfair deceptive, unlawful, and an unfair
9 method of competition.
10

11 IX. DEMAND

12 WHEREFORE, plaintiff demands judgment as follows:
13

14 9.1 Actual damages;

15 9.2 Statutory damages pursuant to the FDCPA, 15 U.S.C. §
16 1692k(a)(2)(A);
17

18 9.3 Costs and reasonable attorney's fees pursuant to the FDCPA, 15
19 U.S.C. §1692k(a)(3);
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21 9.4 Costs and reasonable attorney's fees pursuant to the Washington
22 Consumer Protection Act, RCW 19.86;

23 9.5 Treble damages pursuant to the Washington Consumer Protection
24 Act, RCW 19.86;
25

1 9.6 Declaratory Judgment that defendants' practices violate the Fair Debt
2 Collection Practices Act and/or the Washington Consumer Protection
3 Act; and/or the Washington Collection Agency Act;

4
5 9.7 Injunction prohibiting Defendants from contacting Plaintiff regarding
6 debts of Abraham Berhanu;

7
8 9.8 Injunction prohibiting Defendants from engaging in the practices
9 prohibited by 15 USC §1692d, harassment or abuse;

10 9.9 Injunction prohibiting Defendants from attempting to collect from any
11 debtor, unless it provides the written Notice required by 15 USC
12 1692g(a) within five days of its initial communication with the
13 debtor;
14

15 9.10 For such other and further relief as may be just and proper.

16
17 DATED this 25th day of July, 2008.

18 *Michael D. Kinkley P.S.*

19
20 /s Michael D. Kinkley
21 Michael D. Kinkley
22 WSBA # 11624
23 Attornev for Plaintiff
24
25